In the High Court of Judicature at Madras

Dated: 11.02.2006

Coram:

The Honourable Mr.Justice S.R.SINGHARAVELU

Civil Revision Petition (NPD) Nos.639 and 640 of 2002
and
C.M.P.No.6523 of 2002

Kishan N.Lalwani ... Petitioner/tenant

..vs..

M/s.India House
by its partner C.S.Jafar Ali
No.67, Kumaran Road,
Thiruppur Town,
Thiruppur Taluk,
Coimbatore District. ... Respondent/Landlor

Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 18 of 1960 as stated therein.

For Petitioner : Mr.M.Sriram
For Respondent : Mr.Sathish Parasaran

ORDER

These Civil Revision Petitions arise out of the common order dated 25.9.2001 passed in R.C.A.Nos 18 and 19 of 1993 by the Rent Control Appellate Authority(Subordinate Judge), Thiruppur. These R.C.As. have arisen against the common order dated 30.7.1993 passed by the Rent Controller (District Munsif), Tiruppur in R.C.O.P.Nos. 15 of 1992 and 18 of 1992.

2. R.C.O.P.15 of 1992 was filed by the landlord for eviction on the ground of wilful default; subsequently, R.C.O.P.82 of 1992 was filed by the tenant under Section 8 (5) of the Act seeking permission to deposit the rent.

3. Although the landlord's petition for eviction did not mention the months of default in payment of rent, the tenant's application seeking permission to deposit the rent mentioned the period as lying between September 1989

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

and December 1991.

4. Admittedly there is default in payment of rent between September 1989 and December 1991 and that is why the tenant has filed an application seeking permission to deposit the rent of those months into court. Now, we have to find out as to whether that default is a wilful default due to supine indifference on the part of the tenant.

5. In this connection learned counsel for the tenant submitted that as early as on 4.12.1989 the rent for September 1989 was sent by Money Order through Ex.B1, which was refused; that subsequently on 1.3.1990 a cheque was drawn through Ex.B2 for the rent due from September 1989 to December 1989 and that was also refused to receive by the landlord. Similarly a cheque dated 10.3.1990 and another cheque dated 9.6.1990 respectively under Ex.B3 and B4 were drawn for the rent due from September 1989 to March 1990 and September 1989 to May 1990 respectively and were sent to the landlord, who has refused to be received the same. Again a cheque dated 6.9.1990 through Ex.B5 for a sum of Rs.12,000/- and a cheque dated 28.7.1991 through Ex.B7 for a sum of Rs.22,000/- respectively for the rent due from September 1989 to August 1990 and September 1989 to January 1991 were sent and they were refused to be received by the landlord. Ex.B10 is yet another Demand Draft dated 15.4.1992 for a sum of Rs.28,000/- accompanied by a cheque for a sum of Rs.3,000/- both respectively for the rent due between September 1989 and December 1991 as well as January 1992 to March 1992 and those instruments were refused to be received by the landlord.

6. Learned counsel for the landlord relied upon Ex.A3 cheque dated 30.1.1992 for a sum of Rs.28,000/- sent by the Revision Petitioner/tenant, which when presented was dishonoured.

7. By relying upon the above document, the learned counsel for the landlord argued that mere sending of cheque alone will not indicate the tendering of the amount due for the rent and especially when Ex.A3 cheque was dishonoured.

8. Per contra the learned counsel for the tenant submitted that all the attempts made by the tenant in sending the rent by way of cheques were refused to be received by the landlord and so there cannot be any wilful default or supine indifference on the part of the tenant.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

9. In this connection a passbook dated 18.11.1990 found in Account No.6435 opened in the name of the tenant himself is there. On a perusal of the passbook, it is found that at the time when Exs.B3, B4 cheques were issued, there was no sufficient amount found in the account of the tenant. Among the cheques through Exs.B2 to B5 and B7, B3 and B4 cheques would have been dishonoured as it is found that during the time of issue, there was no sufficient funds in the account of the tenant. Yet another dishonoured cheque of the tenant is through Ex.A3 dated 30.1.1992. Therefore, the cheques sent by the tenant on 10.3.1990, 9.6.1990 and 30.1.1992 were not supported by any finance in the account. What is left out is only Ex.B1 M.O. dated 4.12.1989 for the rent of September 1989; Ex.B2 cheque dated 1.3.1990 for the rent of September 1989 to December 1989; Ex.B5 cheque dated 6.9.1990 for the rent of September 1989 to August 1990; Ex.B7 cheque dated 29.7.1991 for the rent of September 1989 to June 1991; Ex.B10, dated 15.4.1992 containing Demand Draft and cheque respectively for the rent due for the months of September 1989 to December 1990 and January 1991 to March 1992.

10. Thus, endeavours made by the tenant which appears to be bona fide are only on the following dates:- 4.12.1989, 1.3.1990, 6.9.1990, 29.7.1991 and 15.4.1992. There is no continuity in such endeavour. The intermittent lapses indicate the default. Now, we have to find out whether it is wilful or not.

11. The learned counsel for the tenant relied upon a case law in Rajalinga Chettiar and others v. Nataraja Mudaliar (1995 II MLJ 211), wherein it was found that 'tenant sending rent by Money Order to landlord which was refused and opening Savings Bank account in his own name in a Post Office and deposited the rent tenant was not guilty of wilful default.' But in that case the landlord was required by the tenant to name the bank and on the failure of the landlord only the tenant has deposited the rent in his account. It is in that circumstance, the tenant was held as not guilty of wilful default. But here is the case where the tenant has never required the landlord the name of the bank for depositing the rent. Therefore the facts are different.

12. The learned counsel for the Petitioner/tenant again relied upon a case law in Chordia Auatomobiles v. S.Moosa and others [(2000(3) SCC 282), wherein in para 8 it is held that 'wilful default means an act consciously or deliberately done with open defiance and intent not to pay the rent.' That was a case wherein quantum of rent itself

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

was in dispute and that dispute was found genuinely. Eviction suit in that case filed before maturing a case of wilful default. It is in that circumstances, it was held so.

13. The learned counsel for the Revision Petitioner/tenant again relied upon a case law in A.M.A. Jabbar v. T.S.Abdul Bari and others (1997 TNLJ 326), wherein it was held that "since the tenant has paid the entire arrears before the effective date of the first hearing, there is no wilful default committed by him." But in this case no payment was made in respect of arrears. Had the tenant intended to make payment, he would have sent it by Money Order. What he has preferred is send the amount by way of cheque and through the instances of those dated 10.3.1990, 9.6.1990 and 30.1.1992 without having any support of finance in his passbook. Thus, the facts of the case in our hand is different from the above cited case law.

14. Reliance was placed by the learned counsel for the tenant in a case law in Minor Rajakumari etc., v. N.V.Natarajan (1994-1-L.W. 340), wherein it was observed as follows:-

> "There is also no dispute that the Money Order so sent was refused. Thereafter, it was open to the respondent to have followed the procedure laid down in the Act with reference to the deposit of rent, but instead he had opened an account and had been depositing the rents in that account so as to make it available to the petitioner whenever required. Though it may be that the respondent was not in order in not having resorted to the provisions of the Act with reference to the payment of rents, in as much as the evidence of R.W.1. that he had deposited the amounts in a bank account has not been repudiated or rejected as unacceptable, it follows that there could not be any wilful default as such in the payment of rents in this case, as contended by the learned counsel for the petitioner."

That was a case where the rent between 7.11.1983 and December 1983 was dealt with. It was observed that from the evidence available, it is seen that the respondent had paid rent till the end of December 1983. With reference to the rent payable for the month of January, 1984, it could have been paid in February 1984 and the Money Order sent by the respondent for that amount also was accepted by P.W.1. So the facts are entirely different from the case in our hand.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

15. The learned counsel for the landlord relied upon a case law in E.Palanisamy v. Palanisamy [(2003)1 Supreme Court Cases 123], wherein the following was observed:-

> "It would be seen from the above provisions that while the landlord is required to issue a notice of default, on refusal by the landlord to accept rent, the tenant is required to call upon the landlord by way of a notice to specify the name of a bank in which rent could be deposited by the tenant to the credit of the landlord. If the landlord specifies the name of the bank to deposit the rent, there is an obligation on the part of the tenant to make the deposit of arrears of rent in the account of the landlord. However, if the landlord does not specify the name of a bank in spite of being called upon by the tenant through a notice, the tenant is required to send the amount of arrears through a money order to the landlord after deducting the commission payable on the money order. If the landlord still refuses to accept the rent, the tenant is entitled to file an application before the Rent Controller seeking permission to deposit the arrears of rent under sub-section (5) of Section 8 of the Act."

16. In this case, excepting one Money Order, through Ex.B1 dated 4.12.1989 in which the rent for September 1989 alone was sent, remaining are only cheques through Exs.B2 to B5, B7, A3, B10 among which Exs. B3 and B4 cheques were not supported by finance in the passbook of the tenant and Ex.A3 cheque was dishonoured. What is left out is the cheques of March 1990, September 1990, July 1991 and April 1992. No Money Order was sent for these months. No notice was sent to the landlord requiring him to name the bank for depositing the rent. Even the application seeking permission for depositing the rent in C.R.P.No.82 of 1992 was made only in August, 1992. The default was from September 1989. Lapses are found on the part of the tenant in not obliging in payment of rent regularly. No proper explanation is adduced excepting intermittent refusal of the landlord, which by itself may not go to the rescue of the tenant; since the other cheque through Ex.A3 was dishonoured and two other cheques through Exs. B3 and B4 found no support of finance in the bank passbook. That alone indicate the indifference on the part of the tenant. From this, it will be taken that default is not supported by any specific explanation leading to the conclusion that it is wilful.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

17. I do not find any merit in these Civil Revision Petitions. Both the Civil Revision Petitions fail and are dismissed. The common order dated 25.9.2001 passed in R.C.A.Nos 18 and 19 of 1993 by the Rent Control Appellate Authority(Subordinate Judge), Thiruppur arising out of the common order dated 30.7.1993 passed by the Rent Controller (District Munsif), Tiruppur in R.C.O.P.Nos. 15 of 1992 and 18 of 1992 is confirmed. No costs. Consequently, C.M.P.No.6523 of 2002 is also dismissed. Time for eviction six months.

gr.

Sd/

Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Rent Control Appellate Authority (Subordinate Judge), Tiruppur.
2. The Rent Controller (District Munsif), Tiruppur.
3. The Record Keeper, VR Section, High Court, Madras

+ one cc to Mr. M. Sriram, Advocate sr no. 5999
+ one cc to Mr,. Sathish Parasaran, ADvocate sr no. 5980

TEJ(CO)
NM(03.03.2006)

C.R.P.(NPD)Nos.639 and 640 OF 2002

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/